

**SUMMARY OF MEETING BETWEEN THE FEDERAL AVIATION
ADMINISTRATION
AND
THE AIRPORTS COUNCIL NORTH AMERICA
CONCERNING
AIRPORT SECURITY ISSUES**

DECEMBER 10, 2001

LOCATION: Federal Aviation Administration (FAA)
800 Independence Avenue, SW
Washington, D.C. 20591

PARTICIPANTS

a. FAA

Barry Molar, Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming
Frank SanMartin, Manager, Airport Law Branch, Office of Chief Counsel
Jim Borsari, Manager, Program Guidance Branch, Office of Airport Planning and Programming
Frederick Falcone, Special Projects Officer, Office of Civil Aviation Security Operations
Lyle Fjermedal, Compliance Specialist, Office of Airport Safety and Standards
Andrea Toney, Program Analyst, Office of Airport Planning and Programming

b. Airports Council International North America (ACI-NA)

Dick Marchi, Senior Vice President, Technical and Environmental Affairs, ACI-NA
Alex Zaslov, Manager of Economic Affairs, ACI-NA
Lynn Hampton, Vice President for Finance and Chief Financial Officer, Metropolitan Washington Airport Authority (MWAA)
Charles Flood, Acting Deputy Director, Office of Field and Landside Operations, Maryland Aviation Administration, Baltimore Washington International Airport (MAA-BWI)
Stanley J. Milesky, Assistant Director, Division of Finance, Office of Business Administration, Maryland Aviation Administration, Baltimore Washington International Airport (MAA-BWI)

NOTE: The purpose of meeting was to discuss procedures for reimbursement of airports, on-airport parking lots and vendors of on-airfield direct services to air carriers for security mandates as a result of requirements identified in section 121 of the Transportation and Aviation Security Act of 2001. The FAA issued a notice of proposed rulemaking on December 17, 2001 in response to section 121 of the Act.

Mr. Molar provided an overview of the statute and the timeline we are working with. He indicated that we have until December 19, 2002 to get the guidance together. In addition, because there is a lot that the statute leaves to discretion, we will need to issue guidance as a regulation. We will be following the approach used with the recent airline compensation rule. Mr. Molar also noted that there will be an opportunity for comments and that the statute does require consultation with effected groups.

Mr. Molar reiterated that we are working diligently to meet the statutory deadline. In addition, he mentioned that airport direct costs would be eligible for reimbursement.

Mr. Molar stated that FAA positions expressed in the meeting were staff positions subject to change in the review and coordination process.

An airport representative asked whether there would be a pecking order for the 3 categories (i.e. vendors, airport operators, on airport parking lots). Mr. Molar indicated there did not seem to be any pecking order based on the statute and that everyone would be treated the same at this point. Mr. Molar further recognized that there would be arguments on both sides on the issue of a pecking order.

A discussion ensued on the issue of airport parking lots and the presumed notion that most on airport parking lots are owned by airports. The group discussed the issue of possible double reimbursements from the airport owner and the parking lot owner.

An airport representative raised the issue of whether capital costs would be reimbursement eligible if the costs are for lost parking spaces for security reasons. Mr. Molar agreed to look at this issue.

An airport representative raised the issue of whether there would be any difficulty with a conduit issuer of debt to finance terminal development and specifically whether they would be able to apply for reimbursement.

There was discussion regarding on airport services such as fueling, maintenance and catering vs. off airport prop. repair shops. Mr. Molar indicated that eligible activities for reimbursement should have a linkage to the airfield and that the applicant also would need to show a linkage between the activity and the expense incurred on the one hand and a specific requirement in a post 9/11 in a security directive regulation or emergency directive on the other. He expects that the guidance in the regulation will give direction that the information on linkage to specific security requirements is protectable under 14 CFR Part 191, and direct the applicant to mark it as such. The information would be subject to review and coordination with FAA and/or the Transportation Security Agency.

Mr. Falcone indicated that the challenge for the FAA will be the degree of protection that can be afforded. He indicated that by describing security relevant information you would not be able to put it out there for public consumption. If we cite the information we will have the body of information out there. Mr. Marchi suggested that we certify that the airport demonstrates the requirement. Mr. Falcone indicated his concerns regarding the security of the information.

A discussion ensued regarding AIP grants and the level of detail used in defining airport access upgrades. Mr. Molar indicated that the specific details remain in the airport office and are not part of the formal grant.

An airport representative asked whether direct costs for planning, design changes related to security mandates would be eligible. Mr. Molar indicated that as long as costs cannot be shared with another activity and were not previously considered they would be eligible.

The question of lost revenue was raised and Mr. Molar indicated it would not be reimbursable. In contrast, Mr. Molar indicated that the costs associated with moving/towing cars because of 9/11 security mandates would be reimbursable.

The issue of costs to recover the parking spaces that would have been used before barriers were put in those places was discussed. In addition, the group discussed the costs for jersey barriers etc. Mr. Falcone suggested that the jersey barriers are used more as a traffic control device than a specific security use. The group further discussed the issue of a jersey barrier vs. a 24 hour 7 day a week traffic officer. Mr. Falcone suggested that as with AIP funding there may be some differences between an FAA security judgement vs. a local airport judgment on a need.

Mr. Molar mentioned that there is a realization that airports undertook doing things in good faith and related this to reasonable care language. In addition, Mr. Falcone mentioned that when a requirement is imposed it can be met with various options.

Mr. Marchi raised the issue of the new law enforcement officers that have been hired at airports since 9/11. Mr. Molar suggested that the key was whether the expansion occurred to meet security mandates. Mr. Falcone suggested that the issue of increased visual patrols on the ramp post 9/11 are relevant.

The group discussed the issue of the possibility that eligible expenses may exceed appropriated amounts. Mr. Molar indicated that a pro-rated share of eligible expenses would occur if this were the case. Further, he indicated that eligible expenses would cover the time frame from 9/11 until the date that the application is filed. A second round of applications could be filed in the event that there are still funds remaining after the initial applications were filed and examined.

Mr. Fjermedal discussed the issue of capital costs and whether they would be AIP eligible.

Mr. Molar indicated that police costs would be eligible in terms of the difference between pre 9/11 and subsequent to 9/11 to the degree that the expenditure was just for enhanced security requirements. Mr. Falcone further discussed that there is little

uniformity in airport operations and that some airports may have exceeded the minimum requirements that the FAA had directed.

The group discussed the issue of an airport that provided food for police officers because the airport restaurants were closed. The airport operator felt that providing the food would minimize the time it would take for police officers to seek food off the airport property.

The issue of whether the increased costs for bomb sniffing dogs in the terminal would be eligible was discussed.

The issue that some airports may have had a greater need to respond to FAA security requirements above the minimum level was discussed. Mr. Molar indicated that there have been judgment calls made by the FAA and the airports as result of post 9/11.

Mr. Molar indicated that indirect costs would not be eligible for reimbursement under this rule. Such costs should be explored through other means.

The issue of rates and charges was discussed. Mr. Molar indicated that as with PFC's if you request reimbursement a rate increase cannot also be imposed.

A discussion ensued regarding how to determine the sense of Congress with regard to the funding. Mr. Marchi mentioned that some entities are so important that you can't let them go under (financially).

The issue of the additional requirements needed in the terminal area was discussed. Specifically the need for more security doors, lost revenue by airport restaurant vendors, the long lines at the security check points and the fact that the terminal was large enough to accommodate security requirements post 9/11 were discussed. Mr. Molar indicated that restaurant vendors are not eligible to receive reimbursement under this directive.

The group discussed the issue of documenting airport revenue subject to Part 191 and the coordination needed between FAA and TSA.

Mr. Molar indicated that the FAA is looking at some after the fact audit requirements and thinking of using a \$300k threshold. The group discussed the role of the auditor and whether the auditor is just determining that the costs were incurred.

Mr. Fjermedal indicated that no matter what the entity when costs are over \$300k most organizations have an annual audit. He also mentioned that we need to keep the audit requirements general enough so that an organization's regular auditor can fulfill the requirement in this rule. He further mentioned that one exception might be a vendor who is so small that they do not do an audit, but they have an expense over \$300k.

Mr. Molar indicated that he envisions a uniform due date for the total of all eligible costs. Applications would be due 90 days after appropriation or no later than June 1.

The group discussed the issue of ongoing costs and specifically that airports have not seen all of the costs associated with the new security requirements. Mr. Falcone

mentioned the issue of reasonableness. An airport representative mentioned that an airport that moves quickly could be rewarded for their documentation.

Mr. Fjermedal raised the issue of year-end audit adjustments and adjusted forms. In addition, a discussion ensued regarding automatic adjustments and the possibility of a partial appropriation and additional funds being appropriated later.

The group discussed the issue of how to encourage applicants to file early.

Mr. Molar mentioned that the applications would be sent to APP and that each applicant would be sent a "dear applicant" letter.

Mr. Molar indicated that reimbursement payments would be made through wire transfer, in keeping with e-commerce policies.

A discussion ensued regarding the timing of the rule. Barry indicated that we will solicit comments, although the regulation will be written as a final rule.

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